

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

RICKY DWAYNE HARVEY,)
Petitioner,)
v.) Nos. 2:13-CR-34
United States of America,) 2:15-CV-117
Respondent.)

ORDER

The matter before the Court is to consider the Report and Recommendation of the United States Magistrate Judge dated August 31, 2018. [Doc. 835]. In that Report and Recommendation (“R & R”), the Magistrate Judge recommends that the petitioner’s claim that his counsel was ineffective for failing to file a notice of appeal raised in his Motion to Vacate pursuant to 28 U.S.C. § 2255 be denied. [*Id.* at 11]. Following a hearing on the matter, the Magistrate Judge found that no credible evidence was presented by petitioner to support his claim that he instructed counsel to file an appeal on his behalf, particularly in light of the facts that Harvey did not file a notice of appeal on his own, did not instruct the Clerk’s Office to file a notice of appeal on his behalf, and made no further inquiry to his counsel on the topic. [*Id.* at 9].

Petitioner, through counsel, timely filed an objection to the R & R on September 14, 2018. [Doc. 836]. Petitioner included the transcript of the hearing before the Magistrate Judge as an exhibit to his objection. [Doc. 836-1]. Petitioner argues that the testimony at the hearing before the Magistrate Judge does not support the finding in the R & R that trial counsel “disputes” petitioner’s claim that he requested an appeal. [Doc. 836 at 3, citing Doc. 835 at 8]. The government has not filed any objections to the R & R, and the time for doing so has passed.

After careful and *de novo* consideration of the record as a whole, and after careful consideration of the Report and Recommendation of the United States Magistrate Judge, and for the reasons set out in that Report and Recommendation which are incorporated by reference herein, it is hereby **ORDERED** that this Report and Recommendation, [Doc. 835], is **ADOPTED** and **APPROVED** in its entirety without modification. The effect of this adoption is that petitioner's claim, raised in his § 2255 motion, [Doc. 663], that his counsel was ineffective for failing to file a notice of appeal on his behalf, is **DENIED**. The remainder of the claims raised by petitioner in his § 2255 motion will be analyzed separately in a contemporaneously-filed memorandum opinion and order.

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE